

MT LEGISLATIVE HISTORY

Chapter 104 1985

Bill (H) 43 S _____

Original bill & hist. ✓C

H. Committee on Business & Labor

S. Committee on Business & Industry

Hearing Date(s) JAN 15 ✓C

Hearing Date(s) JAN 30 ✓C

_____ ✓C

MAR 5 ✓C

_____ ✓C

_____ ✓C

_____ ✓C

_____ ✓C

Date Out JAN 15 ✓C

MAR 5 ✓C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

HOUSE FINAL STATUS

1/09 HEARING
 1/10 COMMITTEE REPORT-NO RECOMMENDATION
 1/11 REREFERRED TO TAXATION
 1/22 HEARING
 DIED IN COMMITTEE

HB 42 INTRODUCED BY MANUEL
 GENERALLY REVISE LAWS ON TAX AND ALCOHOL
 BY REQUEST OF CODE COMMISSIONER

1/07 INTRODUCED
 1/07 REFERRED TO TAXATION
 1/09 HEARING
 1/09 COMMITTEE REPORT-BILL DO PASS
 1/11 2ND READING PASS 99 0
 1/14 3RD READING PASS 96 0

TRANSMITTED TO SENATE
 1/15 REFERRED TO TAXATION
 1/29 HEARING
 1/29 COMMITTEE REPORT-BILL CONCURRED
 1/30 2ND READING CONCURRED 49 0
 2/01 3RD READING CONCURRED 48 1

RETURNED TO HOUSE
 2/07 SIGNED BY SPEAKER
 2/07 SIGNED BY PRESIDENT
 2/07 TRANSMITTED TO GOVERNOR
 2/11 SIGNED BY GOVERNOR
 CHAPTER NUMBER 20 EFFECTIVE DATE: 10/01/85

HB 43 INTRODUCED BY HARPER
 UNIFORM TRADE SECRETS ACT

1/07 INTRODUCED
 1/07 REFERRED TO BUSINESS & LABOR
 1/08 HEARING
 1/15 COMMITTEE REPORT-BILL PASS AS AMENDED
 1/18 2ND READING PASS 96 0
 1/21 3RD READING PASS 97 0

TRANSMITTED TO SENATE
 1/22 REFERRED TO BUSINESS & INDUSTRY
 1/30 HEARING
 3/05 COMMITTEE REPORT-BILL CONCURRED
 3/06 2ND READING CONCURRED 47 0
 3/08 3RD READING CONCURRED 48 0

RETURNED TO HOUSE
 3/12 SIGNED BY SPEAKER
 3/13 SIGNED BY PRESIDENT
 3/18 TRANSMITTED TO GOVERNOR
 3/19 SIGNED BY GOVERNOR
 CHAPTER NUMBER 104 EFFECTIVE DATE: 10/01/85

HB 44 INTRODUCED BY WALDRON
 REQUIRE PAYMENT OF VICTIM COUNSELING BY OFFENDER;
 RAPE OR INCEST

1 HOUSE BILL NO. 43
2 INTRODUCED BY HARPER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE UNIFORM
5 TRADE SECRETS ACT; DEFINING "TRADE SECRET"; AND PROVIDING
6 CIVIL REMEDIES FOR MISAPPROPRIATION OF TRADE SECRETS."

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Short title. [This act] may be cited as the
10 Uniform Trade Secrets Act.

11 Section 2. Definitions. As used in [this act], unless
12 the context requires otherwise the following definitions
13 apply:

14 (1) "Improper means" includes theft, bribery,
15 misrepresentation, breach or inducement of a breach of a
16 duty to maintain secrecy, or espionage through electronic or
17 other means;

18 (2) "Misappropriation" means:

19 (a) acquisition of a trade secret of another by a
20 person who knows or has reason to know that the trade secret
21 was acquired by improper means; or

22 (b) disclosure or use of a trade secret of another
23 without express or implied consent by a person who:

24 (i) used improper means to acquire knowledge of the
25 trade secret;

1 (ii) at the time of disclosure or use, knew or had
2 reason to know that his knowledge of the trade secret was:

3 (A) derived from or through a person who had utilized
4 improper means to acquire it;

5 (B) acquired under circumstances giving rise to a duty
6 to maintain its secrecy or limit its use; or

7 (C) derived from or through a person who owed a duty
8 to the person seeking relief to maintain its secrecy or
9 limit its use; or

10 (iii) before a material change of his position, knew or
11 had reason to know that it was a trade secret and that
12 knowledge of it had been acquired by accident or mistake.

13 (3) "Person" means a natural person, corporation,
14 business trust, estate, trust, partnership, association,
15 joint venture, government, governmental subdivision or
16 agency, or any other legal or commercial entity.

17 (4) "Trade secret":

18 (a) means information, including a formula, pattern,
19 compilation, program, device, method, technique, or process,
20 that:

21 (i) derives independent economic value, actual or
22 potential, from not being generally known to, and not being
23 readily ascertainable by proper means by, other persons who
24 can obtain economic value from its disclosure or use; and

25 (ii) is the subject of efforts that are reasonable

1 under the circumstances to maintain its secrecy; and

2 (b) includes computer software.

3 Section 3. Injunctive relief -- royalty. (1) Actual
4 or threatened misappropriation may be enjoined. Upon
5 application to the court, an injunction must be terminated
6 when the trade secret has ceased to exist, but the
7 injunction may be continued for an additional reasonable
8 period of time in order to eliminate commercial advantage
9 that otherwise would be derived from the misappropriation.

10 (2) If the court determines that it would be
11 unreasonable to prohibit future use, an injunction may
12 condition future use upon payment of a reasonable royalty
13 for no longer than the period of time the use could have
14 been prohibited.

15 (3) In appropriate circumstances, affirmative acts to
16 protect a trade secret may be compelled by court order.

17 Section 4. Damages. (1) In addition to or in lieu of
18 injunctive relief, a complainant may recover damages for the
19 actual loss caused by misappropriation. A complainant also
20 may recover for the unjust enrichment caused by
21 misappropriation that is not taken into account in computing
22 damages for actual loss.

23 (2) If willful and malicious misappropriation exists,
24 the court may award exemplary damages in an amount not
25 exceeding twice any award made under subsection (1).

1 Section 5. Costs and attorney fees. If a claim of
2 misappropriation is made in bad faith, a motion to terminate
3 an injunction is made or resisted in bad faith, or willful
4 and malicious misappropriation exists, the court may award
5 reasonable costs and attorney fees to the prevailing party.

6 Section 6. Preservation of secret. In an action under
7 [this act], a court shall preserve the secrecy of an alleged
8 trade secret by reasonable means, which may include granting
9 protective orders in connection with discovery proceedings,
10 holding in-camera hearings, sealing the records of the
11 action, and ordering any person involved in the litigation
12 not to disclose an alleged trade secret without prior court
13 approval.

14 Section 7. Statute of limitations. An action for
15 misappropriation must be brought within 3 years after the
16 misappropriation is discovered or by the exercise of
17 reasonable diligence should have been discovered. For the
18 purposes of this section, a continuing misappropriation
19 constitutes a single claim.

20 Section 8. Effect on other law. (1) [This act]
21 displaces conflicting tort, restitutionary, and other law of
22 this state pertaining to civil liability for
23 misappropriation of a trade secret.

24 (2) [This act] does not affect:

25 (a) contractual or other civil liability or relief

1 that is not based upon misappropriation of a trade secret;
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3 (b) criminal liability for misappropriation of a trade
4 secret.

5 Section 9. Uniformity of application and construction.
6 [This act] shall be applied and construed to effectuate its
7 general purpose to make the law uniform with respect to the
8 subject of [this act] among states enacting it.

9 Section 10. Severability. If a part of this act is
10 invalid, all valid parts that are severable from the invalid
11 part remain in effect. If a part of this act is invalid in
12 one or more of its applications, the part remains in effect
13 in all valid applications that are severable from the
14 invalid applications.

-End-

STATUS SHEET

49TH

LEGISLATIVE SESSION

COMMITTEE ON BUSINESS AND LABOR

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
20	1-4	1-8	1-8	1-8					
28	1-4	1-11/1-15	1-15			1-15			
29	1-4	1-8	1-8	1-8					
32	1-4	1-8/1-9	1-9			1-9			
41	1-4	1-9/1-10	1-10	WITHOUT RECOMMENDATION					
43	1-4	1-8/1-15	1-15			1-15			
72	1-4	1-16/1-18	1-18			1-18			
85	1-4	2-13	2-13	2-13					
90	1-4	1-10/1-14/ 2-5			TABLED				
96	1-4	1-16/1-18	1-18	1-18					
referred 96	1-21	1-21	1-21			1-21	(REREFERRED)		
97	1-4		REREFERRED TO	JUDICIARY					
107	1-4	1-11/1-15	1-15			1-15			
121	1-7	1-22/1-23 2-22	2-22			2-22			
124	1-9	1-15	1-15	1-15					
127	1-9	1-15/1-23			TABLED				

Use a separate sheet for Senate, House Bills, and Resolutions

MINUTES OF THE MEETING
BUSINESS AND LABOR COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

January 15, 1985

The meeting of the Business and Labor Committee was called to order by Chairman Bob Pavlovich on January 8, 1985 at 9:00 a.m.

ROLL CALL: All members were present, with the exception of Representative Robert Ellerd, who was excused by the chairman.

HOUSE BILL NO. 127: Hearing commenced on House Bill No. 127. Representative Kerry Keyser, District #74, sponsor of the bill, stated that this bill is a general revision of the laws that regulate private investigators and patrolmen. Changed substantially is the definition of "insurance adjuster" by providing that an adjuster does not investigate "crimes of wrongs", except as provided in the registration requirements for armed guards and investigators. This bill will also remove the exemption for charitable institutions, delete residency requirements, clarify requirements for qualifying agents and resident manager, remove exemptions from registration as an armed guard or investigator and provide qualifications for unarmed private investigators. Representative Keyser distributed to committee members Exhibit 1 which outlines the amendments proposed by the Board of Security Patrolmen and Private Investigators.

Proponent Clayton Bain, Chairman of the Board of Security Patrolmen and Private Investigators, stated that the board is in support of House Bill 127, with their proposed amendments as set out in Exhibit 1.

Proponent Don Valiton of the Montana Association of Private Investigators and Security Operators in Ovando explained that the security business is rapidly growing, with currently over one million people employed in the private security field. These individuals provide a service to the business community by qualified personnel. Mr. Valiton is supportive of the law enforcement industry. He would like to see our law enforcement personnel paid adequately, rather than have them take a second job, in order to exist. The mental and emotional strain was recognized by Mr. Valiton. We need the private investigators and they need us, added Mr. Valiton.

Proponent Robert B. Evans, President of Timberline Investigators in Kalispell and a member of the Montana Association of Private Investigators and Security Operators does support House Bill 127 with the amendments as shown on his Witness Statement. Mr. Evans stated that prior to 1983 there were 450

offered their support to House Bill 124. She urged the committee to pass this bill.

Proponent Mike Walker of the Montana State Firemans Association does favor House Bill 124. Mr. Walker stated that the members of the association have enjoyed the benefits that this law provide for and want to continue enjoying them.

Proponent Nadiean Jensen representing AFSCME did offer her support of House Bill 124.

There being no further discussion by proponent or opponents, all were excused by the chairman and the hearing on House Bill No. 124 was closed.

ACTION ON HOUSE BILL NO. 124: Representative Driscoll moved that HB 124 DO PASS. The motion was passed unanimously.

ACTION ON HOUSE BILL NO. 43: Representative Driscoll moved that HB 43 DO PASS. Representative Kadas moved that amendment number 4) as shown on the Standing Committee Report, DO PASS. The motion did pass with all but Representative Thomas voting aye. Representative Wallin moved that amendments number 1), 2) and 3) as shown on the Standing Committee Report, DO PASS. The motion was passed unanimously. Representative Kadas moved that HB 43 DO PASS AS AMENDED. The motion was seconded by Representative Hansen and passed unanimously.

ACTION ON HOUSE BILL NO. 28: Chairman Pavlovich explained that Mr. Heffelfinger is in agreement with Mr. Tippy's amendment number two, which is raising the alcohol content in "table wine" to 16%. Representative Kadas moved that HB 28 DO PASS. Representative Thomas then moved that Mr. Tippy's amendments one and two DO PASS. The motion was passed unanimously. Representative Kadas then moved that HB 28 DO PASS AS AMENDED. The motion was passed unanimously.

ACTION ON HOUSE BILL NO. 107: Representative Brown moved that HB 107 DO PASS. Paul Verdon, the committee researcher stated that HB 107 should have an extension of authority. Representative Schultz moved that the addition of the extension of authority DO PASS. The motion was passed unanimously. Representative Brandewie moved that Representative Driscoll's amendment as shown on the Standing Committee Report DO PASS. The motion was passed with all but Representative Wallin voting aye. Representative Driscoll then moved that HB 107 DO PASS AS AMENDED. The motion was passed with all but Representative Wallin voting aye. Representa-

DAILY ROLL CALL
BUSINESS AND LABOR COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date Jan. 15, 1985

NAME	PRESENT	ABSENT	EXCUSED
Bob Pavlovich	✓		
Les Kitselman	✓		
Bob Bachini	✓		
Ray Brandewie	✓		
Jan Brown	✓		
Jerry Driscoll	✓		
Robert Ellerd			✓
William Glaser	✓		
Stella Jean Hansen	✓		
Marjorie Hart	✓		
Ramona Howe	✓		
Tom Jones	✓		
Mike Kadas	✓		
Vernon Keller	✓		
Lloyd McCormich	✓		
Jerry Nisbet	✓		
James Schultz	✓		
Bruce Simon	✓		
Fred Thomas	✓		
Norm Wallin	✓		

STANDING COMMITTEE REPORT

January 15 19 85

MR. Speaker

We, your committee on BUSINESS AND LABOR

having had under consideration House Bill No. 43

first reading copy (white)
color

Uniform trade secrets act.

Respectfully report as follows: That House Bill No. 43

AND AS AMENDED,
DO PASS

gr 1/15/85

BUSINESS AND LABOR COMMITTEE
Page 2

BE AMENDED AS FOLLOWS:

- 1) Page 2, line 18
Following: "information"
Insert: "or computer software"
- 2) Page 3, line 1
Following: "secrecy"
Strike: "; and"
- 3) Page 3, line 2
Strike: "(b) includes computer software"
- 4) Page 3, line 24
Following: "damages"
Strike: the remainder of line 24 and line 25 through
"(1)"

AND AS AMENDED,
DO PASS

APPROVED BY COMM. ON
BUSINESS AND LABOR

HOUSE BILL NO. 43

INTRODUCED BY HARPER

A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE UNIFORM
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without express or implied consent by a person who:

(i) used improper means to acquire knowledge of the
trade secret;

(ii) at the time of disclosure or use, knew or had
reason to know that his knowledge of the trade secret was:

(A) derived from or through a person who had utilized
improper means to acquire it;

(B) acquired under circumstances giving rise to a duty
to maintain its secrecy or limit its use; or

(C) derived from or through a person who owed a duty
to the person seeking relief to maintain its secrecy or
limit its use; or

(iii) before a material change of his position, knew or
had reason to know that it was a trade secret and that
knowledge of it had been acquired by accident or mistake.

(3) "Person" means a natural person, corporation,
business trust, estate, trust, partnership, association,
joint venture, government, governmental subdivision or
agency, or any other legal or commercial entity.

(4) "Trade secret":

~~(a)~~ means information OR COMPUTER SOFTWARE, including
a formula, pattern, compilation, program, device, method,
technique, or process, that:

~~(i)~~ (A) derives independent economic value, actual or
potential, from not being generally known to, and not being
readily ascertainable by proper means by, other persons who
can obtain economic value from its disclosure or use; and

~~(ii)~~ (B) is the subject of efforts that are reasonable

under the circumstances to maintain its secrecy--and

~~{b}--includes-computer-software.~~

Section 3. Injunctive relief -- royalty. (1) Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction must be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(2) If the court determines that it would be unreasonable to prohibit future use, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time the use could have been prohibited.

(3) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

Section 4. Damages. (1) In addition to or in lieu of injunctive relief, a complainant may recover damages for the actual loss caused by misappropriation. A complainant also may recover for the unjust enrichment caused by misappropriation that is not taken into account in computing damages for actual loss.

(2) If willful and malicious misappropriation exists, the court may award exemplary damages in--an--amount--not exceeding-twice-any-award-made-under-subsection-(1).

Section 5. Costs and attorney fees. If a claim of misappropriation is made in bad faith, a motion to terminate an injunction is made or resisted in bad faith, or willful and malicious misappropriation exists, the court may award reasonable costs and attorney fees to the prevailing party.

Section 6. Preservation of secret. In an action under [this act], a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

Section 7. Statute of limitations. An action for misappropriation must be brought within 3 years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this section, a continuing misappropriation constitutes a single claim.

Section 8. Effect on other law. (1) [This act] displaces conflicting tort, restitutionary, and other law of this state pertaining to civil liability for misappropriation of a trade secret.

(2) [This act] does not affect:

(a) contractual or other civil liability or relief

1 that is not based upon misappropriation of a trade secret;
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7 general purpose to make the law uniform with respect to the
8 subject of [this act] among states enacting it.

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10 invalid, all valid parts that are severable from the invalid
11 part remain in effect. If a part of this act is invalid in
12 one or more of its applications, the part remains in effect
13 in all valid applications that are severable from the
14 invalid applications.

-End-

CHAIRMAN--HALLIGAN, MIKE
NORMAL SCHEDULE==> SITE: ROOM 410

DAYS: M-TU-W-TH-F

TIME: 10:00 A.M.-12 NOON

SECRETARY-DUVAL, CAROL

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0029	1/14	1/18	1/18	CONCUR		1/18
WILLIAMS, J. MELVIN	(MEL)		MOVING CONTRACTOR RESIDENCY DETERMINATION FROM DEPT. OF REVENUE TO COMMERCE			
HB0043	1/22	1/30	1/30 3/05	CONCUR		3/5
HARPER, HAL			UNIFORM TRADE SECRETS ACT			
HB0072	1/24	2/06	2/06 3/05	CONCUR AS AMENDED		3/5
KITSELMAN, LES			REGULATION OF INTEREST RATES ON LIFE INSURANCE POLICY LOANS			
HB0085	2/19	3/08		CONCUR		3/8
LORY, EARL C.			STATE ELIGIBLE FOR PUBLICLY OWNED GOLF COURSE BEER AND WINE LICENSES			
HB0121	3/04	3/27		CONCUR AS AMENDED		3/27
NATHE, DENNIS G.			UTILITY RATE CLASSIFICATION FOR AREAS LACKING AN ALTERNATIVE TO ELECTRICITY			
HB0127	1/30	2/07	2/07 3/05 3/28	CONCUR AS AMENDED		3/28
KEYSER, KERRY R.			REVISE LAW ON PRIVATE INVESTIGATORS AND SECURITY PATROLMEN			
HB0175	2/04	2/07	2/07 3/05	ADVERSE REPORT		3/5
KADAS, MIKE			INCREASING MEMBERSHIP OF BOARD OF PRIVATE SECURITY PATROLMEN			
HB0183	2/12	3/19	3/21 3/22 3/29	CONCUR AS AMENDED		3/29
ELLERD, ROBERT A.			DESIGNATED NONSMOKING AREA REQUIRED FOR ALL ENCLOSED PUBLIC PLACES			
HB0184	2/11	3/07		CONCUR AS AMENDED		3/7
SCHYE, TED			ALLOW CASH BINGO PRIZES			
HB0195	1/30	2/07	2/07 2/08	CONCUR		2/8
GARCIA, RODNEY L.			REPLACING REFERENCES TO MOBILE HOMES WITH FACTORY-BUILT BUILDINGS			
HB0215	2/07	3/06		CONCUR AS AMENDED		3/6
MILES, JOAN			ALLOW TEMPORARY BEER ADS ON EXTERIOR OF RETAILERS' PREMISES			

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-End-

MINUTES OF THE MEETING
BUSINESS & INDUSTRY COMMITTEE
MONTANA STATE SENATE

January 30, 1985

The twelfth meeting of the Business & Industry Committee met in Room 410 of the Capitol Building. The meeting was called to order at 10:05 a.m. by Chairman Mike Halligan.

ROLL CALL: All committee members were present.

CONSIDERATION OF SENATE BILL 206: Senator Jack Haffey, Senate District 33 from Anaconda, introduced this bill by request from the motor vehicle division of the Department of Justice. This bill would revise the method of filing security interests in motor vehicles and exempt vehicles constituting dealer inventory from perfection of security interests by notation on the title.

PROPOSERS: Mr. Larry Majerus, Administrator of the Motor Vehicle Division of the Department of Justice gave the committee some amendments they would like to see proposed and added into the bill. The first amendment adds snowmobiles (EXHIBIT 1) and the second amendment cleans up some drafting errors that were made. (EXHIBIT 2) He explained the first part of the bill brings the motor vehicle code in line with the U.C.C. Code or Title 30. In 1983, Title 30 was amended and that exemption was never noted in Title 61. This would provide this exclusion. The second part of the bill would simplify the method of filing a security interest for motor vehicles. Presently the lien document must be filed and sent to Deer Lodge with the title. He explained some of the problems of trying to deal with every piece of information by many different people, making sure each description matches exactly, etc. With this bill you would just file a notice that would have the information on it and sign it which would then authorize the motor vehicle division to place this lien on a particular vehicle. It would simplify greatly what has to be filed with their office. Les Alke, from the Montana Bankers Association feels it would simplify filings and reduce the flow of documents and therefore they support this bill. (EXHIBIT 3) Tom Curruthers, from First Bank of Helena, Montana, stated they also support this bill. He explained the primary purpose is to put other creditors on notice that they have a security interest on a vehicle. (EXHIBIT 4)

OPPOSERS: There were no opposers to Senate Bill 206.

Questions from the committee were then called for. Senator Christiaens wondered about the assessment for not filing promptly and was told it was hard to enforce. Senator Halligan asked about the time period for destruction of documents and was informed it was 8 years.

The hearing was closed on Senate Bill 206.

CONSIDERATION OF HOUSE BILL 43: Rep. Hal Harper, District 44, Helena, introduced this bill at the request of local people involved in computer software technology. This bill would adopt the Uniform Trade Secrets Act which 6 states have already adopted. It would deal specifically with patterns, formulas and such things as computer software. This bill contains definitions and remedies for misappropriations of this type of information, provides for injunctive relief, exemplary or punitive damages and damages for the actual loss suffered from such misappropriation. It also makes a provision that a court can order reasonable means to protect the trade secret for a reasonable length of time. He noted two amendments were made by the House committee before transferring it to the Senate. One dealt with language and the other struck the amount of exemplary damages that can be collected.

PROPOSERS: Mr. Bill Leaphart, Attorney from Helena, explained the bill would cover those areas not covered by the U.S. patent office without the cumbersome process of going through all the red tape involved. He also noted this act has been adopted by 7 states now and if all states adopt this it will be applied uniformly throughout every state. (EXHIBIT 5) Randy Link, from Link Systems, Helena, a software development company, explained how easily a system can be tampered with along the way and how much they need the protection that would be provided by this bill. (EXHIBIT 6) Greg McCurdy, of Data West, Inc. also expressed the same sentiments and urged the committee's consideration. (EXHIBIT 7) Carl Englund, Attorney from Missoula, representing the Montana Trial Lawyers, added the only law we currently have concerning computer software technology is a court ruling handed down by Judge Battin. He feels this bill might eliminate the confusion there might be now should litigation result.

OPPOSERS: There were no opponents to House Bill 43.

Questions were then called for from the committee. Senator Christiaens wanted to know if this would eliminate some of the requirements of going through the U.S. patent office and was told it would not. Senator Neuman wanted to know if this was a general practice to set the cost of attorney fees and injunctive relief. Carl Englund replied it was not common for attorney fees but for injunctive relief it was generally in the power of the court to keep this knowledge secret. He felt the courts should be aware that a public hearing had been held or it could defeat the very purpose of the legislation. Senator Thayer was concerned about the open endedness of the wording of punitive damages. Rep. Harper explained the House felt that it was good to limit it to twice the amount of damages

for actual loss. Senator Halligan wanted to know what types of protective measures the computer software industry has now and was told they have what is known as shrink wrap copy right. Rep. Harper closed the hearing on House Bill 43. Senator Dave Fuller will carry this bill on the Senate floor.

CONSIDERATION OF SENATE BILL 192: Senator Chris Christiaens, District 17, Great Falls, is sponsoring this bill. He explained this bill was similar to one passed last session and would correct an error which reduced the time limit from 20 days to 10 for filing purchase money security interests under the U.C.C. He feels this was an oversight and that the extra time is very necessary.

PROPOSERS: Mr. Blake Wordal, representing the Montana Hardware and Implement Dealers Association, requested this bill and they support its passage. (EXHIBIT 8)

OPPOSERS: There were no opponents to Senate Bill 192.

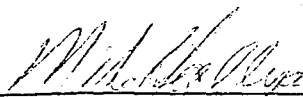
The hearing was closed on Senate Bill 192.

DISPOSITION OF SENATE BILL 192: Senator Boylan made a motion that Senate Bill 192 DO PASS. Motion carried.

CONSIDERATION OF SENATE BILL 206: Mary McCue agreed that some language changes are necessary in order to clarify the first amendment proposed. She noted there should be a change in the bill from chapter 4 to chapter 9. Senator Goodover MOVED to ADOPT THE AMENDMENTS on the language changes. This motion carried. Discussion then followed on the amendment to insert snowmobiles into the bill. It was decided to check into all recreation vehicles first before acting on this amendment.

CONSIDERATION OF SENATE BILL 146: This bill was passed January 23 by the committee with some amendments. The bill is ready for second reading and Senator Fuller wanted to discuss bringing the bill back to committee for further discussion before taking it to the floor. Chairman Halligan made a MOTION to bring Senate Bill 146 back to Business & Industry committee. The motion carried.

The meeting was adjourned at 11:15 a.m.


Chairman

BUSINESS & INDUSTRY

COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 1-2

SENATE
SENT
#

NAME	PRESENT	ABSENT	EXCUSED
Chairman Halligan	X		
V-chrm. Christiaens	X		
Senator Boylan	X		
Senator Fuller	X		
Senator Gage	X		
Senator Goodover	X		
Senator Kolstad	X		
Senator Neuman	X		
Senator Thayer	X		
Senator Williams	X		

Each day attach to minutes.

(This sheet to be used by those testifying on a bill.)

NAME: W. W. LEAPHART DATE: 1/30/85

ADDRESS: 1 N. East Chance Helena

PHONE: 442-4930

REPRESENTING WHOM? Randy Link

APPEARING ON WHICH PROPOSAL: HB 43

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENT: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

EXHIBIT 5
BUSINESS & INDUSTRY
JANUARY 30, 1985

(This sheet to be used by those testifying on a bill.)

NAME: RANDY LINK DATE: 1/30/85

ADDRESS: 1800 WILDER

PHONE: 443-3454

REPRESENTING WHOM? LINK SYSTEMS

APPEARING ON WHICH PROPOSAL: HB 43 TAPE SEARCH

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

EXHIBIT 6
BUSINESS & INDUSTRY
JANUARY 30, 1985

(This sheet to be used by those testifying on a bill.)

NAME: GREGG L. McCURDY DATE: 1-30-85

ADDRESS: 920 STRAWBERRY

PHONE: 442-3070

REPRESENTING WHOM? DATA WEST, INC.

APPEARING ON WHICH PROPOSAL: HB 43

DO YOU: SUPPORT? YES AMEND? _____ OPPOSE? _____

COMMENT: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

EXHIBIT 7
BUSINESS & INDUSTRY
JANUARY 30, 1985

MINUTES OF THE MEETING
BUSINESS & INDUSTRY COMMITTEE
MONTANA STATE SENATE

March 5, 1985

The thirty-first meeting of the Business & Industry Committee met on March 5, 1985 in Room 410 of the Capitol Building. Chairman Mike Halligan called the meeting to order at 10 a.m.

ROLL CALL: All committee members were present.

DISPOSITION OF HOUSE BILL 43: Senator Halligan stated this bill codifies what Billings Judge Battin had decided in a court case concerning trade secrets. Senator Christiaens then made a motion that House Bill 43 BE CONCURRED IN. Senator Thayer felt the language was a bit too broad and could see some potential problems with it. Senator Christiaens felt if a case went to trial you would have to prove willful and malicious misappropriation was committed. The motion carried. Senator Christiaens will carry the bill on the Senate floor.

CONSIDERATION OF HOUSE BILL 321: Representative Ray Peck, House District 15 of Havre, introduced this bill at the request of the Commissioner of Financial Institutions within the Department of Commerce. It will revise the definition of demand and time deposits in banks, reduce the time within which such deposits are payable and provide an immediate effective date. The time period would now be 7 days.

PROPOSERS: Fred Napier, with the Department of Commerce, was going to appear in support but was unable to appear because of a conflict of schedules.

OPPOSERS: There were no opponents.

Questions were then called for. There were none. Representative Peck then closed the hearing on House Bill 321.

DISPOSITION OF HOUSE BILL 321: Senator Christiaens moved that House Bill 321 BE CONCURRED IN. The motion carried. Senator Neuman will carry the bill on the Senate floor.

DISPOSITION OF HOUSE BILL 72: Senator Halligan explained the amendment being proposed is the result of a compromise worked out between New York Life agents and the industry providing the variable interest rate along with the fixed rate policies to ensure that the option for either policy is still available. (EXHIBIT 1) Lester Loble was asked about the compromise and he stated that New York Life was the only company that did not offer variable rates and other companies offer variables or fixed rate policies. He had talked with the New York Life people and they were comfortable with this amendment. Senator Thayer then made a motion to PASS the amendment to House Bill 72. This motion carried. Senator Williams then moved the bill BE CONCURRED IN AS AMENDED. Senator Kolstad did not feel that all the agents were in complete agreement with the amendment. Senator Goodover then

ROLL CALL

BUSINESS & INDUSTRY

COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 3/5/85

SENATE
SENT

#

NAME	PRESENT	ABSENT	EXCUSED
Chairman Halligan	X		
V-chrm. Christiaens	X		
Senator Boylan	X		
Senator Fuller	X		
Senator Gage	X		
Senator Goodover	X		
Senator Kolstad	X		
Senator Neuman	X		
Senator Thayer	X		
Senator Williams	X		
Senator Weeding	X		

Each day attach to minutes.

STANDING COMMITTEE REPORT

MARCH 5

19 83

MR. PRESIDENT

BUSINESS & INDUSTRY

We, your committee on

HOUSE BILL

No. 43

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UNIFORM TRADE SECRETS ACT
(Christiaens)

Respectfully report as follows: That

HOUSE BILL

No. 43

BE CONCURRED IN

XXXXXX

XXXXXXXXXX

Mike Helligan

Chairman.

HOUSE BILL NO. 43
INTRODUCED BY HARPER

A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE UNIFORM
TRADE SECRETS ACT; DEFINING "TRADE SECRET"; AND PROVIDING
CIVIL REMEDIES FOR MISAPPROPRIATION OF TRADE SECRETS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. [This act] may be cited as the
Uniform Trade Secrets Act.

Section 2. Definitions. As used in [this act], unless
the context requires otherwise the following definitions
apply:

(1) "Improper means" includes theft, bribery,
misrepresentation, breach or inducement of a breach of a
duty to maintain secrecy, or espionage through electronic or
other means;

(2) "Misappropriation" means:

(a) acquisition of a trade secret of another by a
person who knows or has reason to know that the trade secret
was acquired by improper means; or

(b) disclosure or use of a trade secret of another
without express or implied consent by a person who:

(i) used improper means to acquire knowledge of the
trade secret;

(ii) at the time of disclosure or use, knew or had
reason to know that his knowledge of the trade secret was:

(A) derived from or through a person who had utilized
improper means to acquire it;

(B) acquired under circumstances giving rise to a duty
to maintain its secrecy or limit its use; or

(C) derived from or through a person who owed a duty
to the person seeking relief to maintain its secrecy or
limit its use; or

(iii) before a material change of his position, knew or
had reason to know that it was a trade secret and that
knowledge of it had been acquired by accident or mistake.

(3) "Person" means a natural person, corporation,
business trust, estate, trust, partnership, association,
joint venture, government, governmental subdivision or
agency, or any other legal or commercial entity.

(4) "Trade secret":

~~{+}~~ means information OR COMPUTER SOFTWARE, including
a formula, pattern, compilation, program, device, method,
technique, or process, that:

~~{++}~~(A) derives independent economic value, actual or
potential, from not being generally known to, and not being
readily ascertainable by proper means by, other persons who
can obtain economic value from its disclosure or use; and

~~{+++}~~(B) is the subject of efforts that are reasonable

1 under the circumstances to maintain its secrecy,--and

2 ~~{b}--includes-computer-software.~~

3 Section 3. Injunctive relief -- royalty. (1) Actual
4 or threatened misappropriation may be enjoined. Upon
5 application to the court, an injunction must be terminated
6 when the trade secret has ceased to exist, but the
7 injunction may be continued for an additional reasonable
8 period of time in order to eliminate commercial advantage
9 that otherwise would be derived from the misappropriation.

10 (2) If the court determines that it would be
11 unreasonable to prohibit future use, an injunction may
12 condition future use upon payment of a reasonable royalty
13 for no longer than the period of time the use could have
14 been prohibited.

15 (3) In appropriate circumstances, affirmative acts to
16 protect a trade secret may be compelled by court order.

17 Section 4. Damages. (1) In addition to or in lieu of
18 injunctive relief, a complainant may recover damages for the
19 actual loss caused by misappropriation. A complainant also
20 may recover for the unjust enrichment caused by
21 misappropriation that is not taken into account in computing
22 damages for actual loss.

23 (2) If willful and malicious misappropriation exists,
24 the court may award exemplary damages ~~in--an--amount--not~~
25 ~~exceeding-twice-any-award-made-under-subsection-{1}.~~

1 Section 5. Costs and attorney fees. If a claim of
2 misappropriation is made in bad faith, a motion to terminate
3 an injunction is made or resisted in bad faith, or willful
4 and malicious misappropriation exists, the court may award
5 reasonable costs and attorney fees to the prevailing party.

6 Section 6. Preservation of secret. In an action under
7 [this act], a court shall preserve the secrecy of an alleged
8 trade secret by reasonable means, which may include granting
9 protective orders in connection with discovery proceedings,
10 holding in-camera hearings, sealing the records of the
11 action, and ordering any person involved in the litigation
12 not to disclose an alleged trade secret without prior court
13 approval.

14 Section 7. Statute of limitations. An action for
15 misappropriation must be brought within 3 years after the
16 misappropriation is discovered or by the exercise of
17 reasonable diligence should have been discovered. For the
18 purposes of this section, a continuing misappropriation
19 constitutes a single claim.

20 Section 8. Effect on other law. (1) [This act]
21 displaces conflicting tort, restitutionary, and other law of
22 this state pertaining to civil liability for
23 misappropriation of a trade secret.

24 (2) [This act] does not affect:

25 (a) contractual or other civil liability or relief

1 that is not based upon misappropriation of a trade secret;
2 or

3 (b) criminal liability for misappropriation of a trade
4 secret.

5 Section 9. Uniformity of application and construction.
6 [This act] shall be applied and construed to effectuate its
7 general purpose to make the law uniform with respect to the
8 subject of [this act] among states enacting it.

9 Section 10. Severability. If a part of this act is
10 invalid, all valid parts that are severable from the invalid
11 part remain in effect. If a part of this act is invalid in
12 one or more of its applications, the part remains in effect
13 in all valid applications that are severable from the
14 invalid applications.

-End-